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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EVAN E. DUSSIA

Appeal 2007-2564
Application 09/616,276
Technology Center 3600

Decided: March 31, 2008

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Evan E. Dussia (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-4 and 6-24. Claim 5 has been cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

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SUMMARY OF DECISION

We AFFIRM.¹

THE INVENTION

The Appellant's claimed invention is directed to a computerized method and system for obtaining, storing, and accessing medical records.

Claims 1, 2, and 12 reproduced below, are illustrative of the subject matter on appeal.

1. A medical health record storage and retrieval system comprising:

an extraction module operable to extract a patient's diagnosis and treatment information from respective progress notes of a physician;

a storage module configured to store the extracted diagnosis and treatment information in a logically connected database; and

a server configured to allow web-enabled data sharing access to the stored database by authorized users using a remote or local web-enabled device.

2. A computerized method for managing respective health records of a plurality of patients, said method comprising:

uploading a progress note of a respective patient, said progress note comprising data relative to an encounter between a respective physician and the respective patient;

identifying on said progress note respective

¹ Our decision will make reference to Appellant's Appeal Brief ("Br." filed Aug. 17, 2005) and the Examiner's Answer ("Answer," mailed Mar. 6, 2006).

parameters selectable by the respective physician;

storing said progress note with said identified parameters in a database accessible to a plurality of authorized users; and

populating said database with respective progress notes and respective identified parameters resulting from further encounters between the respective patient and any respective physician so as to create a historical set of progress notes with identified parameters for that respective patient, the set of historical progress notes being interconnectable based on one or more logic operators.

12. A computer readable medium encoded with computer code for managing respective health records of a plurality of patients, the program code causing a computer to execute a method comprising:

uploading a progress note of a respective patient, said progress note comprising data relative to an encounter between a respective physician and the respective patient;

identifying on said progress note respective parameters selectable by the respective physician;

storing said progress note with said identified parameters in a database accessible to a plurality of authorized users; and

populating said database with respective progress notes and respective identified parameters resulting from further encounters between the respective patient and any respective physician so as to create a historical set of progress notes with identified parameters for that respective patient, the set of historical progress notes being interconnectable based on one or more logic

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operators.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Lavin	US 5,772,585	Jun. 30, 1998
Iliff	US 6,206,829 B1	Mar. 27, 2001
Evans	US 6,347,329 B1	Feb. 12, 2002
Walker	US 5,949,875	Sep. 7, 1999

The following rejections are before us for review:

1. Claims 1 and 22-24 are rejected under 35 U.S.C. § 103(a) as unpatentable over Lavin and Iliff.
2. Claims 2-4, 6-8, 10-17, and 19-20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Lavin and Evans.
3. Claims 9 and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Lavin, Evans, and Walker.
4. Claim 21 is rejected under 35 U.S.C. § 103(a) as unpatentable over Lavin, Iliff, and Walker.

ISSUES

The first issue before us is whether the Appellant has shown that the Examiner erred in rejecting claims 1 and 22-24 as unpatentable over Lavin and Iliff.

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The second issue before us is whether the Appellant has shown that the Examiner erred in rejecting claims 2-4, 6-8, 10-17, and 19-20 as unpatentable over Lavin and Evans.

The third issue before us is whether the Appellant has shown that the Examiner erred in rejecting claims 9 and 18 as unpatentable over Lavin, Evans, and Walker.

The fourth issue before us is whether the Appellant has shown that the Examiner erred in rejecting claim 21 as unpatentable over Lavin, Iliff, and Walker.

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

The scope and content of the prior art

1. Lavin is directed to a system for managing patient medical information.
2. Iliff is directed to a system for providing computerized, knowledge-based medical diagnostic and treatment advice.
3. Evans is directed to a medical records system for creating and maintaining patient data electronically.
4. Walker is directed to a billing and collection system.

Any differences between the claimed subject matter and the prior art

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5. The prior art does not disclose or suggest “historical progress notes being interconnectable based on one or more logic operators” (claims 2 and 12).

The level of skill in the art

6. Neither the Examiner nor Appellants has addressed the level of ordinary skill in the pertinent art of computerized management of records. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Secondary considerations

7. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of

obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). See also KSR, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” 383 U.S. at 18.

ANALYSIS

Rejection of claims 1 and 22-24 as unpatentable over Lavin and Iliff.

The Appellant argues claims 1 and 22-24 as a group (Br. 5-7). We select claim 1 (see *supra*) as the representative claim for this group, and the remaining claims 22-24 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Examiner argues that Lavin discloses all the claimed features but for the claimed limitation “server configured to allow web-enabled data sharing access to the stored database by authorized users using a remote or local web-enabled device,” for which Iliff is relied upon. The Examiner specifically relied upon “col. 73, lines 1-67 to col. 74, line 67” (Final Rejection 3 and Answer 4) of Iliff as evidence to show it was known for a “user [to] utilize[] a network access processor or computer to access the network so that medical diagnostic scripts can be executed on a script engine to generate medical advice or a diagnosis.” (Answer

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4). The Examiner determined that “[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Iliff within the teaching of Lavin with the motivation of providing a MDATA system which utilizes communication networks, such as the Internet, to connect a user or patient with the MDATA computer.”

The Appellant does not appear to have rebutted the Examiner’s articulated reasoning. Rather, the Appellant focuses on Iliff, and especially on the disclosure at (col. 4, ll. 46-58), to argue that the prior art does not teach web-enabled data sharing. (Br. 6). However, the Examiner relied instead on (col. 73, ll. 25-30), of Iliff. Consistent with the Examiner’s characterization, (col. 73, ll. 25-30) of Iliff does disclose communicating to a MDATA (i.e., a database, see col. 68, l. 10) server with a wireless portable computer. Accordingly, the Appellant has not shown error in the rejection with this argument.

The Appellant also argues that Lavin does not show the extraction limitation. (Br. 6). The Examiner directs attention to, for example, Fig 24. Fig. 24 shows relationships whereby a variety of types of information may be retrieved, including information taken from progress notes. (See Lavin, col. 15, l. 39). Accordingly, we are satisfied that the Examiner has established that Lavin discloses the extraction limitation of the claim. Accordingly, the Appellant has not shown error in the rejection with this argument.

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Rejection of claims 2-4, 6-8, 10-17, and 19-20 as unpatentable over Lavin and Evans.

We will not sustain this rejection.

The Examiner argues that Lavin discloses all the claimed features but for “populating said database with respective progress notes and respective identified parameters resulting from further encounters between the respective patient and any respective physician so as to create a historical set of progress notes with identified parameters for that respective patient,” for which Evans was relied upon. The Examiner relied upon col. 7, lines 46-67 to col. 8, line 65; col. 12, lines 3-67. (Final Rejection 5 and Answer 6). The Appellant argues that Evans “merely discloses a data structure with pointers for storing patient information based on a patient identifier. See, for example, Evans, Column 8, lines 35-65. The applicant submits that the data structure as disclosed in Evans is different from “set of historical progress notes being interconnectable based on one or more logic operators” [claim 2].” (Br. 8).

We commend the Examiner for the detailed analysis of the subject matter set forth in the independent and dependent claims. However, after carefully reviewing Evans, especially the passages the Examiner relied upon in reaching the determination of obviousness, we agree with the Appellant that the prior art does not disclose or suggest “historical progress notes being *interconnectable based on one or more logic operators.*” The passages in Evans that the Examiner relied upon describe “data structures [which] include patient data captured by … progress notes … [and] pointers to data structures … .” (Evans, col. 8, ll. 46-50). We do not

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see there any disclosure or suggestion of logic operators with which to interconnect the progress notes. Accordingly, we find the Appellant's argument persuasive as to error.

Rejection of claims 9 and 18 as unpatentable over Lavin, Evans, and Walker.

Claims 9 and 18 depend from claim 2. For the same reasons we found the Appellant's argument persuasive as to error in the rejection of claims 2-4, 6-8, 10-17, and 19-20, we find it persuasive as to error in the rejection of claims 9 and 18.

Rejection of claim 21 as unpatentable over Lavin, Iliff, and Walker.

Claim 21 further includes the limitation "means for ... allocating fees among entities associated with the respective medical diagnosis and treatment information accessed by respective users."

In the Final Rejection (p. 11, repeated in the Answer at 11), the Examiner stated that "this feature is known in the art, as evidenced by Walker." Specifically, the Examiner directed attention to (col. 3, ll. 5-67 to col. 4, l. 8).

The Appellant argued that "nowhere does Walker appear to suggest or describe allocating fees among entities associated with the data itself." (Br. 11).

In responding to the Brief, the Examiner directed further to (col. 9, ll. 29-40 and col. 16, ll. 1-16), of Walker. The Examiner quoted from Walker the following statement: "[t]he diagnoses and procedures may be listed and recorded using customized or automatic codes to aid the billing process" (col. 9, ll. 38-40). (Answer 20).

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We agree with the Examiner. The indicated statement in Walker would suggest allocating fees among entities associated with the respective medical diagnosis and treatment information. That Walker discloses treatment listed using codes to aid the billing process, suggests a means by which fees for the separately listed treatments are allocating among the billable entities. Although “allocating fees” is not expressly disclosed in Walker that is in effect the result one of ordinary skill would expect from performing the Walker procedure. “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR*, 127 S.Ct. at 1742.

The Appellant also repeats arguments that were presented in rebuttal to the rejection of claim 1. We found them unpersuasive as to the rejection of claim 1 and find them equally unpersuasive as to error in the rejection of claim 21.

CONCLUSIONS OF LAW

We conclude the Appellant has failed to show that the Examiner erred in rejecting claims 1 and 22-24 as unpatentable over Lavin and Iliff, and claim 21 as unpatentable over Lavin, Iliff, and Walker.

We conclude the Appellant has shown that the Examiner erred in rejecting claims 2-4, 6-8, 10-17, and 19-20 as unpatentable over Lavin and Evans, and claims 9 and 18 as unpatentable over Lavin, Evans, and Walker.

DECISION

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The decision of the Examiner to reject claims 1-4 and 6-24 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

JRG

BEUSSE WOLTER SANKS MORA & MAIRE, P. A.
390 NORTH ORANGE AVENUE
SUITE 2500
ORLANDO, FL 32801